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April 26, 2010

BY ECF AND MAIL

Honorable Kiyo A. Matsumoto
United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Kissone Frederick, Docket No. 09 CR 258 (KAM)

Dear Judge Matsumoto:

Pursuant to Your Honor's order of April 22, 2010, I submit this letter as a motion to withdraw Kissone Frederick's Rule 29 (a) motion for a judgment of acquittal as to Counts Two, Five and Six. Frederick's Rule 29 (c) renewed motion for a judgment of acquittal for insufficiency of the evidence as to Count Three, charging Frederick with use of a firearm in relation to Count Two, the attempted robbery of the Satellite Communications store, has been filed through my January 13, 2010 written submission to the Court.

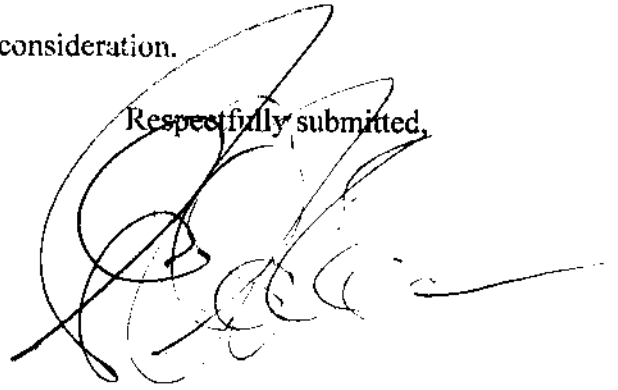
We urge the Court to enter a judgment of acquittal as to Count Three, based on the insufficiency of evidence to support the jury's finding of proof beyond a reasonable doubt that Frederick, or any of the others involved in the attempted robbery, used a gun to commit that crime. Although, as the government correctly pointed out in its January 19th response to the Rule 29 (c) motion, the store clerk testified that she had seen one of the three perpetrators, whom she was unable to identify, take out a gun "from his waist." Yet, her description was premised on the "fuzzy" images taken by the store's surveillance camera, which she viewed prior to her testimony. No other witness -- not cooperator Garreth Hickman, not arresting officer Michael Podber, who found the firearm after the Card Store robbery, nor the prison call in which Frederick refers to the destruction of "my gun," nor the surveillance video that lends support to the government's identification of Frederick as a participant in the attempted Satellite Communications robbery -- provides proof, much less proof beyond a reasonable doubt, to sustain Frederick's "use of a firearm" conviction on Count Three.

Given that the Count Three conviction carries a mandatory consecutive 25 year sentence, Frederick's challenge to insufficiency of the evidence should not, as the

government suggests, be defeated by inferences drawn from the proof of his involvement and use of a firearm in the Card Store robbery or the mistaken testimony of a clerk who, as she conceded in her testimony, was scared to death at the approach of three hooded men, and whose memory was premised on the after-the-fact review of fuzzy surveillance video footage.

I thank Your Honor for your courtesy and consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ephraim Savitt', written over the 'Respectfully submitted,' text.

Ephraim Savitt

cc: Clerk of the Court (KAM)
AUSA Carter Burwell
AUSA Steve Arail
Kissone Frederick